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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

NEIL SILVER , individually and on behalf of all others similarly situated, Plaintiff, vs. TOBIAS & ASSOCIATES INC., d/b/a GET ME HEALTHCARE; DOES 1 through 10, inclusive, Defendant(s).) Case No.)) <u>CLASS ACTION</u>)) COMPLAINT FOR VIOLATIONS OF:)) 1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]) 2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.])) <u>DEMAND FOR JURY TRIAL</u>
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Plaintiff, NEIL SILVER (“Plaintiff”), on behalf of himself and all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for himself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of TOBIAS & ASSOCIATES INC. d/b/a GET ME HEALTHCARE, (“Defendant”), in negligently, knowingly, and/or willfully

1 contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone
2 Consumer Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA"), thereby invading
3 Plaintiff's privacy.

4 **JURISDICTION & VENUE**

5 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
6 a resident of California, seeks relief on behalf of a Class, which will result in at
7 least one class member belonging to a different state than that of Defendant, a
8 Florida corporation. Plaintiff also seeks up to \$1,500.00 in damages for each call
9 in violation of the TCPA, which, when aggregated among a proposed class in the
10 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
11 Therefore, both diversity jurisdiction and the damages threshold under the Class
12 Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

13 3. Venue is proper in the United States District Court for the Northern
14 District of California pursuant to 28 U.S.C. § 1391(b)(2) because a substantial
15 portion of the events giving rise to Plaintiff's claims occurred in this District.

16 **PARTIES**

17 4. Plaintiff NEIL SILVER ("Plaintiff") is a natural person residing in
18 Marin County, California and is a "person" as defined by 47 U.S.C. § 153 (39).

19 5. Defendant TOBIAS & ASSOCIATES INC. d/b/a GET ME
20 HEALTHCARE ("Defendant" or "DEFENDANT"), is an insurance broker, and is
21 a "person" as defined by 47 U.S.C. § 153 (39).

22 6. The above-named Defendant, and its subsidiaries and agents, are
23 collectively referred to as "Defendants." The true names and capacities of the
24 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
25 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
26 names. Each of the Defendants designated herein as a DOE is legally responsible
27 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
28 Complaint to reflect the true names and capacities of the DOE Defendants when

1 such identities become known.

2 7. Plaintiff is informed and believes that at all relevant times, each and
3 every Defendant was acting as an agent and/or employee of each of the other
4 Defendants and was acting within the course and scope of said agency and/or
5 employment with the full knowledge and consent of each of the other Defendants.
6 Plaintiff is informed and believes that each of the acts and/or omissions complained
7 of herein was made known to, and ratified by, each of the other Defendants.

8 **FACTUAL ALLEGATIONS**

9 8. Beginning in or around January of 2020, Defendant contacted Plaintiff
10 on his telephone ending in -5583, in an effort to sell or solicit its services.

11 9. Defendant called Plaintiff on his telephone from phone number (855)
12 927-0729, confirmed to belong to Defendant.

13 10. Defendant used an “automatic telephone dialing system”, as defined
14 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to sell or solicit its
15 business services.

16 11. Defendant’s calls constituted calls that were not for emergency
17 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

18 12. Defendant’s calls were placed to telephone number assigned to a
19 cellular telephone service for which Plaintiff incurs a charge for incoming calls
20 pursuant to 47 U.S.C. § 227(b)(1).

21 13. Plaintiff is not a customer of Defendant’s services and has never
22 provided any personal information, including his cellular telephone number, to
23 Defendant for any purpose whatsoever.

24 14. Defendant never received Plaintiff’s “prior express consent” to
25 receive calls using an automatic telephone dialing system or an artificial or
26 prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

27 15. These calls by Defendant, or its agents, violated 47 U.S.C. § 227(b)(1).
28

CLASS ALLEGATIONS

16. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the proposed class (“The Class”). The Class is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint through the date of class certification.

17. Plaintiff represents, and is a member of, The Class, consisting of all persons within the United States who received any solicitation telephone calls from Defendant to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint through the date of class certification.

18. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the members number in the thousands, if not more. Thus, this matter should be certified as a class action to assist in the expeditious litigation of the matter.

19. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendant.

1 20. Plaintiff and members of The Class were harmed by the acts of
2 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
3 and The Class members via their cellular telephones thereby causing Plaintiff and
4 The Class members to incur certain charges or reduced telephone time for which
5 Plaintiff and The Class members had previously paid by having to retrieve or
6 administer messages left by Defendant during those illegal calls, and invading the
7 privacy of said Plaintiff and The Class members.

8 21. Common questions of fact and law exist as to all members of The
9 Class which predominate over any questions affecting only individual members of
10 The Class. These common legal and factual questions, which do not vary between
11 The Class members, and which may be determined without reference to the
12 individual circumstances of any members, include, but are not limited to, the
13 following:

- 14 a. Whether, within the four years prior to the filing of this
15 Complaint through the date of class certification, Defendant
16 made any telemarketing/solicitation call (other than a call made
17 for emergency purposes or made with the prior express consent
18 of the called party) to a member of The Class using any
19 automatic telephone dialing system or any artificial or
20 prerecorded voice to any telephone number assigned to a
21 cellular telephone service;
- 22 b. Whether Plaintiff and The Class members were damaged
23 thereby, and the extent of damages for such violation; and
- 24 c. Whether Defendant should be enjoined from engaging in such
25 conduct in the future.

26 22. As a person that received numerous telemarketing/solicitation calls
27 from Defendant using an automatic telephone dialing system or an artificial or
28 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting

1 claims that are typical of The Class.

2 23. Plaintiff will fairly and adequately protect the interests of the members
3 of The Class. Plaintiff has retained attorneys experienced in the prosecution of class
4 actions.

5 24. A class action is superior to other available methods of fair and
6 efficient adjudication of this controversy, since individual litigation of the claims
7 of all members of The Class is impracticable. Even if every member of The Class
8 could afford individual litigation, the court system could not. It would be unduly
9 burdensome to the courts in which individual litigation of numerous issues would
10 proceed. Individualized litigation would also present the potential for varying,
11 inconsistent, or contradictory judgments and would magnify the delay and expense
12 to all parties and to the court system resulting from multiple trials of the same
13 complex factual issues. By contrast, the conduct of this action as a class action
14 presents fewer management difficulties, conserves the resources of the parties and
15 of the court system, and protects the rights of each member of The Class.

16 25. The prosecution of separate actions by individual members of The
17 Class would create a risk of adjudications with respect to them that would, as a
18 practical matter, be dispositive of the interests of the other members of The Class
19 not parties to such adjudications or that would substantially impair or impede the
20 ability of such non-party members to protect their interests.

21 26. Defendant has acted or refused to act in respects generally applicable
22 to The Class, thereby making appropriate final and injunctive relief with regard to
23 the members of The Class as a whole.

24 **FIRST CAUSE OF ACTION**

25 **Negligent Violations of the Telephone Consumer Protection Act**

26 **47 U.S.C. §227 et seq.**

27 27. Plaintiff repeats and incorporates by reference into this cause of
28 action the allegations set forth above at Paragraphs 1-26.

28. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

29. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff and The Class members are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

30. Plaintiff and The Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act 47 U.S.C. §227 et seq.

31. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-26.

32. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

33. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227 et seq.*, Plaintiff and The Class members are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

34. Plaintiff and The Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and The Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and The Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

35. Pursuant to his rights under the Seventh Amendment to the United States Constitution, Plaintiff demands a jury on all issues so triable.

Respectfully Submitted this 21st day of October, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff